

United States Court of Appeals
For the Eighth Circuit

No. 14-1724

Kendrick C. Story

Plaintiff - Appellant

v.

Mark Cashion, Warden, Randall L. Williams Unit; Emma Waters, Kitchen
Supervisor, Randall L. Williams Unit

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Pine Bluff

Submitted: September 22, 2014
Filed: September 25, 2014
[Unpublished]

Before WOLLMAN, BYE, and SMITH, Circuit Judges.

PER CURIAM.

Arkansas Department of Correction inmate Kendrick Story appeals the district court's¹ dismissal of his 42 U.S.C. § 1983 claims against warden Mark Cashion and kitchen supervisor Emma Waters. After careful review, see Hintz v. JPMorgan Chase Bank, N.A., 686 F.3d 505, 509 (8th Cir. 2012) (dismissals based on res judicata are reviewed de novo); Levy v. Ohl, 477 F.3d 988, 991 (8th Cir. 2007) (dismissals for failure to state a claim are reviewed de novo), we agree with the district court that Story's claim against Cashion is barred by res judicata, see First Nat'l Bank Sioux Falls v. First Nat'l Bank of S.D., 679 F.3d 763, 767 (8th Cir. 2012) (res judicata bars relitigation if court of competent jurisdiction issued final judgment on merits of same cause of action involving same parties), and his claim against Waters failed to state a claim upon which relief may be granted, see Pagels v. Morrison, 335 F.3d 736, 740 (8th Cir. 2003) (negligence does not establish a failure-to-protect claim); Prater v. Dahm, 89 F.3d 538, 541 (8th Cir. 1996) (duty to protect inmates from attacks requires that prison officials take reasonable measures to abate substantial risks of serious harm of which they are aware); Prosser v. Ross, 70 F.3d 1005, 1008 (8th Cir. 1995) (prison guards have no duty to intervene in armed altercation between inmates if intervention places guards at risk of physical harm). Accordingly, we affirm. See 8th Cir. R. 47B.

¹The Honorable D.P. Marshall Jr., United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Joe J. Volpe, United States Magistrate Judge for the Eastern District of Arkansas.